U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33902652

Date: SEP. 19, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a water polo player, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish the Petitioner had received either a major, internationally recognized award, or, in the alterative, that he met at least three of the ten initial evidentiary criteria required for eligibility. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

An individual is eligible for the extraordinary ability immigrant classification under section 203(b)(1)(A) of the Act if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue working in the area of extraordinary ability; and their entry into the United States will substantially benefit the country.

The implementing regulations provide that a petitioner may establish prima facie eligibility as an individual of extraordinary ability either by demonstrating receipt of a one-time achievement of a major internationally recognized award or, in the alternative, by satisfying at least three of the ten initial evidentiary criteria provided at 8 C.F.R. § 204.5(h)(3)(i)-(x). Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.

See Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022); *Visinscaia v. Beers*, 4 F.Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F.Supp. 2d 1339 (W.D. Wash. 2011).

Here, the Petitioner claimed eligibility based on a one-time achievement under 8 C.F.R. § 204.5(h)(3), and further asserted that he could satisfy four of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Specifically, he claimed eligibility under the criteria related to lesser nationally or international recognized awards, memberships in associations that require outstanding achievements, published materials in major trade publications or other major media, and performance in a leading or critical role for organizations that have a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii) and (viii). The Director concluded that the Petitioner did not demonstrate this receipt of a major, internationally recognized award and further determined that he met none of the four claimed evidentiary criteria.

On appeal, the Petitioner contends that the Director's decision disregards most of the evidence submitted in support of the petition and in response to a request for evidence (RFE) and therefore does not explain why the evidence was deemed insufficient to establish his eligibility for the requested classification. The Petitioner also states that he submitted substantially similar evidence in support of a prior petition requesting the same immigrant classification and emphasizes that U.S. Citizenship and Immigration Services (USCIS) previously determined that he satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(i) and (iii).[1]

The record supports the Petitioner's claims. Upon review, for the reasons discussed below, we conclude that the Director's decision did not adequately analyze the evidence provided and did not fully explain the reasons the petition was denied.

First, we note that although the Petitioner submitted a response to the Director's RFE and the Director acknowledged its receipt, the portions of the decision analyzing the claimed evidentiary criteria do not mention or analyze any of the additional evidence or arguments that were included in the Petitioner's RFE response.

Further, other than including a partial list of awards the Petitioner submitted for consideration under the criterion at 8 C.F.R. § 204.5(h)(3)(i), the decision contains few references to specific evidence the Petitioner provided with the initial filing. For example, in evaluating whether the Petitioner documented his membership in an association that requires outstanding achievements of its members, under 8 C.F.R. § 204.5(h)(3)(ii), the Director's discussion was limited to "a letter . . . indicating that the petitioner is a member of Collegiate Water Polo Association [CWPA]." A review of the record reflects that the Petitioner claimed membership on the [redacted] water polo team, the [redacted] water polo team, and the [redacted] team in men's water polo. The decision does not reflect that any of this evidence was considered by the Director. Further, the Petitioner clarified in response to the RFE

[1] In support of his claim, the Petitioner submits a copy of the Director's decision dated August 9, 2022, relating to his Form I-140, Immigrant Petition for Alien Workers, with receipt number [redacted]

that he did not claim eligibility under this criterion based on membership in the CWPA, which is the NCAA division in which his collegiate water polo team competed.

The criterion at 8 C.F.R. § 204.5(h)(3)(iii) requires evidence of published materials about the individual in professional or major trade publications or other major media. In evaluating the evidence submitted in support of this criterion, the Director stated that the record contains "numerous articles" and concluded without further comment that the Petitioner did not provide evidence that any of the submitted published materials were published in major media. However, they did not acknowledge the Petitioner's submission of an article published in *Sports Illustrated*, and it is unclear whether this evidence was considered.

The Director's decision includes a similarly conclusory determination with respect to the criterion at 8 C.F.R. § 204.5(h)(3)(viii), which requires evidence that the Petitioner performed in a leading or critical role for an organization or establishment with a distinguished reputation. The Director did not acknowledge the specific claims articulated by the Petitioner or much of the evidence he submitted in support of this claim, other than generally noting that he provided "several letters of recommendation."

Overall, the Director's decision did not address the evidence the Petitioner submitted with specificity and improperly disregarded evidence without proper explanation. An officer's written decision must explain the specific reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(1)(i). This explanation should be sufficient to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, for the reasons discussed, due to the Director's conclusory determinations and failure to address the Petitioner's RFE response, the Petitioner did not receive a fair opportunity to challenge the denial. Accordingly, we will withdraw the Director's decision and remand the matter to the Director.

On remand, the Director is instructed to re-evaluate the evidence submitted in support of the petition to determine whether the Petitioner satisfied the plain language of at least three criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) and to issue a new decision. In doing so, the Director should also review the Petitioner's appellate brief and submission on appeal, which further addresses the previously submitted evidence and USCIS' own previous determination that the Petitioner established eligibility under two criteria.

As the Director did not conclude that the Petitioner met the initial evidence requirements, the decision did not include a final merits determination. If after review, the Director determines the Petitioner received a major internationally recognized award or satisfied at least three criteria at 8 C.F.R. § 204.5(h)(3), the new decision should include an analysis of the totality of the record and evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim, that he is one of the small percentage oat the very top of his field, and that his achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2); *see also Kazarian v. USCIS*, 596 F.3d 1115.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.